IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8644 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD NEW COTTON MILLS LTD & 1 - Petitioner(s)

Versus

RAVJIBHAI MOHANBHAI - Respondent(s)

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Appearance :

M/S TRIVEDI & GUPTA for Petitioner(s) : 1 - 2.

RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/12/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 16.01.2001 passed by the Labour Court, Ahmedabad in

Recovery Application No.1156 of 1993 whereby the Labour Court has directed the petitioner to pay an additional sum of Rs. 7,857.30/- and also a sum of Rs.250/- towards the cost of the said Recovery Application.

2. The brief facts of the case are as under :

2.1 The respondent was working with the petitioner company as Badli workman from 05.05.56. As per the terms of settlement arrived at between the petitioner company and the Registered and Representative Union (Majoor Mahajan Sangh), it was settled to reduce 41 workmen handling two looms each from weaving department of the petitioner company on the basis of voluntary resignations of workmen handling two looms each received through Majoor Mahajan Sangh.

2.2 The respondent tendered his resignation on 01.05.92. As a result, a compensation of Rs.37,729.90 was paid to him at the average rate of Rs.75.49/- per day for 510 days. However, the respondent claimed that his average daily wage was Rs. 87.29/- and that he had worked for 525 days instead of 510 days. The respondent thereafter filed Recovery Application.

3. Learned counsel for the petitioner contended that as per the provisions of the Act, the respondent was paid his legal dues by the petitioner being Exh 5 and the same was accepted by the respondent and no dispute was raised. He further contended that as per the proceedings under Section 33C, no dispute was raised and so the Labour Court has committed an error in awarding additional amount just on the basis of average pay for the month of March 1992.

4. As a result of the hearing and perusal of records, the dues are ascertained by the competent authority either under the payment of wages Act or other authority under the respective legal legislation and no such adjudication was done and under the executive proceedings, the Labour Court has granted additional amount. In my view, the Labour Court has committed an error in exercising its powers under Section 33C of the Act. In any case the company has already been closed down and the workman has accepted the dues without any dispute. Hence the order of the Labour Court is required to be quashed and set aside.

6. In the premises aforesaid, this petition is allowed. The impugned award is quashed and set aside. Rule is made absolute with no order as to costs.

(K.S. JHAVERI, J.)

Divya//